

SERVED: December 16, 1994

NTSB Order No. EA-4303

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 7th day of December, 1994

DAVID R. HINSON,)	
Administrator,)	
Federal Aviation Administration,)	
)	
Complainant,)	
)	Dockets SE-13556
v.)	and SE-13557
)	
MICHAEL G. MANIN,)	
)	
Respondent.)	
)	

OPINION AND ORDER

Respondent has appealed from the oral initial decision issued on June 7, 1994, by Administrative Law Judge Patrick G. Geraghty at the conclusion of a hearing held in SE-13556, and from an order terminating the proceeding in SE-13557 based on the parties' assertions that the case had been settled (also issued orally on June 7, 1994).¹ In his oral initial decision in SE-

¹ Attached are excerpts from the consolidated hearing transcript containing the oral initial decision in SE-13556, and the order terminating the proceeding (with the preceding comments of the law judge) in SE-13557.

13556, the law judge affirmed an emergency order² of the Administrator revoking respondent's airline transport pilot certificate based on his intentional falsification, in violation of 14 C.F.R. 67.20(a),³ of two applications for airman medical certification on which he failed to disclose that he had been convicted of making a false statement in a passport application.

As discussed below, respondent's appeal of that decision is denied.

In connection with his order terminating SE-13557 (a revocation action based on respondent's alleged falsification of his birth date and birthplace on numerous applications for airman and medical certificates), the law judge approved the parties' agreement to settle the case for revocation "concurrent with" the revocation affirmed in SE-13556. (Tr. 41-42.) The Administrator has moved to dismiss respondent's appeal in SE-13557 as unperfected since his appeal brief focuses solely on SE-13556 and, as originally filed, bore only the docket number in that case. (In a subsequent "notice of typographical error" respondent attempted to amend the brief's caption to include the docket number in SE-13557.)

² Respondent waived the applicability of the expedited emergency procedures to this case.

³ Section 67.20(a)(1) provides as follows:

§ 67.20 Applications, certificates, logbooks, reports, and records: Falsification, reproduction, or alteration.

(a) No person may make or cause to be made --

(1) Any fraudulent or intentionally false statement on any application for a medical certificate under this part.

We agree with the Administrator that respondent's appeal brief does not meaningfully address SE-13557 and therefore, regardless of what its caption reads, it cannot be construed as perfecting his appeal in that case. Accordingly, respondent's appeal of the order terminating the proceeding in SE-13557 is dismissed as unperfected, pursuant to 49 C.F.R. 821.48(a) and Administrator v. Hooper, 6 NTSB 559 (1988). The remainder of this opinion will focus on the falsification charge affirmed in SE-13556.

It is undisputed that in May 1992, respondent was convicted of making "false statement in application for U.S. passport," in violation of 18 U.S.C. 1542. (Exhibit A-2.) As a result, he was sentenced to pay a fine of \$1,000, and to two years of probation.⁴ (Id.) It is further undisputed that, on subsequent applications for airman medical applications (dated August 11, 1992 and November 15, 1993), respondent answered "no" to question 18w asking whether the applicant has a "[h]istory of other conviction(s) (misdemeanors or felonies)." (See Exhibit A-1.) That question -- along with question 18v, which asks whether the applicant has a history of convictions or administrative actions relating to driving while intoxicated, or other driving-related offenses -- is set apart from other questions on the form relating to medical history. Those questions (18v and 18w) appear beneath the bold heading: "Conviction and/or

⁴ At the hearing respondent testified that he was convicted of using an incorrect birth date on a passport application. (Tr. 14.)

Administrative Action History -- See Instructions Page."

At the hearing, respondent testified that he checked "no" to question 18w because he thought that 18v and 18w sought information only about convictions or administrative actions related to drugs or alcohol. In addition, he claimed that he did not believe he had a "conviction" at all since the criminal judgment entered against him was premised on a bill of information, as opposed to an indictment.⁵ He suggested that he was led to believe by his court-appointed attorney that a bill of information would not result in a conviction, and stated that his attorney did not tell him he had been convicted of a crime.

The law judge rejected respondent's exculpatory explanations, finding it "inherently unbelievable" that "an individual who [like respondent] has filled out more than one of these applications, who is also the holder of an [ATP] [c]ertificate, who you would assume has average or more than average intelligence, would in any way confuse the two questions [18v and 18w]." (Tr. 35.)⁶ He similarly rejected as "simply

⁵ We note that, according to Blacks Law Dictionary, the only difference between a criminal information and a criminal indictment is that an information is presented by a prosecutor, while an indictment is presented by a grand jury. We further note that the criminal judgment entered in respondent's case clearly states that "THE DEFENDANT IS CONVICTED OF THE OFFENSE(S) OF: False statement in Application for U.S. Passport." (Exhibit A-2, emphasis added.)

⁶ The law judge also noted that there are instructions available for this section of the application. (Tr. 31.) Although the issue of whether respondent consulted those instructions was never explored in the record, we take official notice that the instruction page attached to the medical application form -- to which the applicant is specifically

not tenable" respondent's claimed belief that the lack of an underlying indictment somehow affected whether he could be considered to have a conviction. (Tr. 33.) Describing the circumstances of respondent's conviction,⁷ the law judge concluded that there was sufficient circumstantial evidence to establish that respondent knew he had been convicted of a criminal offense, and therefore intentionally falsified the medical applications here at issue.

In appealing the law judge's decision, respondent argues that the law judge did not make the requisite finding of actual knowledge, focusing instead on the element of "intent" (applicable only to the more severe charge of fraud), and that there was insufficient circumstantial evidence in this case to support such a finding.⁸ Respondent asserts that the law judge's rejection of his claim that he believed questions 18v and 18w were to be read in conjunction as relating only to substance abuse convictions, improperly "focused only on [the law judge's]

(..continued)
referred in the introductory heading to questions 18v and 18w -- explains that question 18w "asks if you have ever had any other (nontraffic) convictions (e.g., assault, battery, public intoxication, robbery, etc.)." (Instructions for Completion of FAA Form 8500-8.)

⁷ He noted that: 1) judgment was entered in a criminal case; 2) respondent admitted he had been represented by several attorneys in connection with the criminal case; 3) respondent was obviously aware that he had been sentenced to pay a fine, and to two years probation; and 4) he subsequently sought amelioration of that sentence.

⁸ The elements of intentional falsification are 1) a false statement, 2) in reference to a material fact, 3) made with knowledge of its falsity. Hart v. McLucas, 535 F.2d 516, 519 (9th Cir. 1976).

belief that a reasonable individual would not confuse" the two questions, and not on whether respondent himself had actual knowledge of the falsity of his answer. (App. Br. at 6.)

We cannot agree with respondent's analysis of the initial decision. Even though, as respondent notes, the law judge phrased the issue as whether respondent's false statements were "intentional" (rather than whether respondent had "actual knowledge" of the false statement), we see no meaningful difference in the context of this case. The law judge made it clear that he did not find respondent's proffered reasons for answering falsely to be credible and found that, therefore, respondent had intentionally falsified the applications. Moreover, we think that the law judge's rejection of the notion that "an individual" with certain qualities he believed were possessed by respondent could be confused about the intent of question 18w, is the equivalent of a finding that this specific respondent was not so confused (i.e., he had actual knowledge that he was answering falsely).

It is well-established that an incorrect answer on a medical application constitutes sufficient prima facie proof of intentional falsification. See Administrator v. Krings, NTSB Order No. EA-3908 at 5 (1993), citing Administrator v. Juliao, NTSB Order No. EA-3087 (1990) (if law judge rejects respondent's explanation of false answers, medical application with incorrect answers constitutes circumstantial proof of intent to falsify). Thus, by introducing the medical applications and the record of

conviction, the Administrator presented sufficient prima facie proof of the violation. In light of the law judge's rejection of respondent's proffered explanations for the false answers, he properly affirmed the order of revocation.

ACCORDINGLY, IT IS ORDERED THAT:

1. Respondent's appeal in SE-13556 is denied;
2. Respondent's appeal in SE-13557 is dismissed; and
3. The revocation of respondent's pilot certificate shall commence 30 days after the service of this opinion and order.⁹

HALL, Chairman, LAUBER and HAMMERSCHMIDT, Members of the Board concurred in the above opinion and order.

⁹ For the purpose of this opinion and order, respondent must physically surrender his certificate to an appropriate representative of the FAA pursuant to FAR § 61.19(f).